

#15

UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant/
Real Party in Interest : PETE HESSER

Serial Number : 09/729,556

Filed : 12/04/2000

For : TRASH CAN AND CLOSURE SYSTEM

Examiner : NEWHOUSE, NATHAN J.

Group Art Unit : 3727

ATTORNEY DOCKET : HD46/01

Assistant Commissioner for Patents
Washington, D.C. 20231

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APPLICANT'S SUBSTITUTE APPEAL BRIEF
(Submitted in Triplicate)

This is an appeal from the Examiner's Final Rejection of
July 30, 2002.

REAL PARTY IN INTEREST

The real party in interest in this appeal is applicant PETE
HESSER.

RELATED APPEALS AND INTERFERENCES

There are no related appeals or interferences which will
directly affect, or be directly affected by, or have a bearing
on, the decision in the pending appeal.

STATUS OF THE CLAIM

The status of the claims in this application is:

- A. TOTAL NUMBER OF CLAIMS IN APPLICATION: Claims originally filed in this application are:
Claims 1 - 8.
- B. STATUS OF ALL THE CLAIMS.
1. Claims canceled: 1 and 3 through 8.
 - a. Claims previously canceled: Claims 3 through 8.
 - b. Claim canceled herein: Claim 1
 2. Claims withdrawn from consideration but not canceled: None.
 3. Claims pending: Claim 2
 4. Claims allowed: None.
 5. Claims rejected: Claim 2.
 6. Allowable Claims: None.

STATUS OF AMENDMENTS

A First Office Action issued January 16, 2002, which rejected Claims 1 and 3 - 4 "under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention", Claims 2 and 4 - 8 "under 35 U.S.C. 103(a) as being unpatentable over Ciancimino '170 in view of David et al. '143 and Cassel '416", and Claims 1 and 3 "under 35

U.S.C. 103(a) as being unpatentable over Ciancimono '170 in view of Davis et al. '143 and Cassel '416 as applied to claim 2 above, and further in view of Matthews 35 al. '290."

Applicant filed an amendment dated April 16, 2002, in response to the First Office Action. This amendment canceled Claims 3 - 8 and amended Claims 1 - 2.

A Final Office Action issued July 30, 2002, rejecting Claim 1 "under 35 U.S.C. 112, second paragraph." This rejection is not understood inasmuch as the objectionable language has been amended at the time of the first amendment. The Final Office Action also rejected Claims 1 and 2 "under 35 U.S.C. 103(a) as being unpatentable over Ciancimino '170 in view of Davis et al. '143, Cassel '416 and Matthews 35 al. '290."

A Notice of Appeal was filed October 30, 2002. Applicant's Appeal Brief was submitted December 30, 2003.

A revocation/appointment of Power of Attorney was mailed to the PTO on March 10, 2003.

Notification of Non-compliance was mailed improperly by the PTO to applicant on April 9, 2003. Notice of Dismissal of Appeal and Abandonment of Application mailed to Attorney on November 18, 2003.

A change of attorney's address in application faxed to PTO on December 17, 2003.

Attorney provided by the PTO with copy of paper #9 by facsimile.

Request to Withdraw Holding of Abandonment Issued in Error by Patent and Trademark Office filed concurrently herewith.

SUMMARY OF THE INVENTION

The invention relates to a trash can and closure system 10 for ensuring a secure rotational coupling between a trash can and its lid through a 90 degree turn. The trash can 14 has a closed horizontal circular bottom 16 with a first diameter of about 16.6 inches and an open horizontal circular top 18 with a second diameter of about 19.5 inches. The second diameter is greater than the first diameter and includes a generally frusto conical side wall 20 there between and a central vertical axis. The side wall includes a generally cylindrical upper extent 22 extending downwardly from the top for about 3 inches.

A pair of diametrically opposed handles 26 extend outwardly from the side wall slightly beneath the cylindrical portion.

A pair of similarly configured threads 30 are formed in the cylindrical portion. Each of the threads extends for about 180 degrees and each having an input point 32 and an output point 34 vertically spaced with respect to each other and the axis by a distance of about two inches. The input point of each thread end spaced immediately above the output end of the other thread. Each thread angled between about 2.5 degrees and 4.5 degrees with

respect to a horizontal plane extending perpendicularly through the axis. Each thread contains a generally trapezoidal cross sectional configuration with its angled sides 36, 38 disposed one above the other and at an angle between about 15 degrees and 21 degrees from the plane. Each thread of the trash can is preferably about 1 inch deep and about 1 inch in height at its largest extent.

The trash can also includes a lid 42 having a horizontal circular plate 44 and with a generally cylindrical side wall 46 extending downwardly from the periphery of the plate for about 3 inches. Each thread of the lid is preferably about 1 inch deep and about 1 inch in height at its largest extent.

A lifting handle 50 extending upwardly from adjacent to the center of the plate with a center aligned with the axis.

The lid of the system also includes a pair of similarly configured threads 54 formed in the cylindrical portion. Each of the threads extends about 180 degrees and each includes an input point 56 and an output point 58 vertically spaced with respect to each other and the axis by a distance of about two inches. The input point of each thread end is spaced immediately beneath the output end of the other thread. Each thread is angled between about 2.5 degrees and 4.5 degrees with respect to a horizontal plane extending perpendicularly through the axis. Each thread has a generally trapezoidal cross sectional configuration with its

angled sides disposed one above the other. Each thread is angled between about 15 degrees and 21 degrees from the plane. The trash can including its threads and the lid including its threads are fabricated of generally rigid plastic selected from the class of generally rigid plastics including polyvinyl chloride, and polyethylene with a common thickness between about 0.060 inches and 0.100 inches, preferably about 0.080 inches, throughout the entire extent.

ISSUE

Whether the rejection of Claims 2 "under 35 U.S.C. 103(a) as being unpatentable over Ciancimino '170 in view of Davis et al. '143, Cassel '416 and Matthews 35 al. '290" is proper.

GROUPING OF CLAIMS

Claim 2, the only remaining claim in this application, may be considered alone.

ARGUMENT

In the final rejection, the Examiner rejected Claim 2 "as being unpatentable over Ciancimino '170 in view of Davis et al. '143, Cassel '416 and Matthews 35 al. '290" . This rejection is traversed. Although there are similarities between applicant's invention as presently claimed and the prior art, it is deemed that there are sufficient differences to render the claims patentable over the prior art taken alone or in combination.

The Examiner's proposed combination is improper because of deficiencies of the prior art references and moreover, if there were a suggestion for the combination of these references, the resulting structure would still fail to meet the terms of applicant's invention. As such, it is note agreed that it "would have been obvious to one of ordinary skill in the art at the time the invention was made to make the sidewall of the trash can of Ciancimino tapered as taught by Davis et al. below the cylindrical rim to allow for nesting of the trash can when not in use." Further, the Examiner is wrong when he asserts that it "would have been obvious to one of ordinary skill in the art at the time the invention was made to provide trapezoidal threads as taught by Cassel on the lid and trash can of Ciancimino to provide fastening and sealing of the lid by rotation of 90 degrees with respect to the trash can."

The Examiner is also wrong when he alleged that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to make the trash can and lid of Ciancimino out of polyvinyl chloride as it is a well known material used to make trash cans and lids known in the art." With greater specificity, the Examiner's rejection whether taken alone or in combination still fails to teach the trapezoidal shape of the thread of the lid and the thread at the top of the container.

Additionally, the Examiner fails to show in the prior art the common thickness of the thread of the lid as well as that of the container and further, the extent of the threads around the surface of both the lid and the container. Consider a) the trapezoidal shape of the threads, b) the common thickness of the threads and the entire system throughout the joining area as well as other areas, and c) the circumferential extent of the threads on the surface of the system. With even greater specificity note the specific claim recitations as follows: "a pair of threads formed in the upper extent", "a pair of threads formed in the side wall of the lid", "each thread comprising a generally trapezoidal cross sectional configuration with its angled sides disposed one above the other and at an angle between about 15 degrees and 21 degrees from the plane" in Claim 2.

It would appear that the Examiner has merely gleaned miscellaneous features in the prior art and has attempted to combine them without a teaching for their combination. The only teaching is in applicant's disclosure which, by definition, is not prior art. But even if there were a teaching for the combination, the resulting structure would still fail to anticipate applicant's invention for the reasons set forth herein.

In summary, then, it is urged that applicant's invention is new, not being disclosed in the prior art. Applicant's invention

is clearly useful as a significant step forward in the technology and it is urged, for the reasons advanced herein above, that applicant's invention is unobvious over the prior art, whether taken alone or in any possible combination.

CONCLUSION

In view of the deficiencies of the prior art cited and applied by the Examiner, it is requested that the rejections to the claims be withdrawn and the present application be allowed and passed to issue.

Reconsideration, a reversal of the Examiner's position, and a Notice of Allowance are requested.


Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Edward P. Dufkiewicz", is written over a horizontal line.

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CERTIFICATE OF MAILING

I HEREBY CERTIFY that the foregoing Appeal Brief is being deposited with the U.S. Postal Service with sufficient First Class postage addressed to: Mail Stop Appeal Brief-Patent, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this the 30th day of December, 2003.



Jeanne M. Carrell

APPENDIX A

CLAIMS

What is claimed as being new and desired to be protected by LETTERS PATENT of the United States is as follows:

1. (Cancel)

2. A closure system for ensuring a secure rotational coupling between a container and its lid through a turn comprising:

a container having a closed circular bottom with a first diameter and an open circular top with a second diameter greater than the first diameter and with a side wall there between and a central axis, the side wall having an upper extent extending downwardly from the top;

a pair of threads formed in the upper extent with each of the threads having an input point and an output point spaced with respect to each other;

a lid having a circular plate and with a side wall extending downwardly from the periphery of the plate;

a lifting handle extending upwardly adjacent to the center of the plate;

a pair of threads formed in the side wall of the lid with each of the threads having an input point and an output point spaced with respect to each, and with respect to a horizontal plane extending perpendicularly through the axis, each thread comprising a generally trapezoidal cross sectional configuration

with its angled sides disposed one above the other and at an angle between about 15 degrees and 21 degrees from the plane, the container including its threads and the lid including its threads being fabricated of generally rigid plastic, the rigid plastic being selected from the class of generally plastic rigid plastics including polyvinyl chloride and polyethylene with a common thickness between about 0.010 inches and 0.100 inches throughout the entire extent.